

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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PREDICTION COMPANY LLC,	:	
	:	
Plaintiff,	:	Case No. 09-Civ-7459 (SAS)
	:	
– against –	:	
	:	
ABHISHEK RAJGARHIA,	:	
	:	
Defendant.	:	
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**DECLARATION OF LANCE J. GOTKO**

LANCE J. GOTKO declares as follows:

1. I am a member of Friedman Kaplan Seiler & Adelman LLP, counsel for defendant Abhishek Rajgarhia (“Rajgarhia”). I make this declaration in support of Rajgarhia’s motion to dismiss this action (a) pursuant to Rules 12(b)(4), 12(b)(5), and 12(b)(2) of the Federal Rules of Civil Procedure, and (b) for failure to prosecute.
2. After Rajgarhia terminated his employment with Prediction and Prediction accused Rajgarhia of wrongdoing, counsel for the parties explored whether the dispute could be resolved.
3. On August 25, 2009, Prediction commenced this action.
4. On August 26, 2009, I sent counsel for Prediction an email stating, *inter alia*, that (a) Prediction should not expect Rajgarhia’s voluntary cooperation in the lawsuit, (b) due to Prediction’s interference with Rajgarhia’s newest job, he was terminated and, because he was in this country under a work visa, was required to return

to India permanently, and (c) I was not authorized to accept service on his behalf. (*See* Affidavit of Victoria A. Cundiff, sworn to March 5, 2010 (“Cundiff Aff.”), Ex. 6.)

5. On August 28, 2009, I informed counsel for Prediction that I did not know Rajgarhia’s address in India.

6. On October 7, 2009, I again informed counsel for Prediction that Rajgarhia had returned to India, that I did not know Rajgarhia’s address in India, and that “[a]s is his right, Abhishek is demanding appropriate legal process, and will not be appearing in this matter unless and until he is properly served.” (*See* Cundiff Aff. Ex. 8.)

7. On October 20, 2009, pursuant to Rule 4.2(a) of the Professional Rules of Conduct, I declined to permit Prediction’s counsel’s to contact Rajgarhia directly. (*See* Cundiff Aff. Ex. 9.)

8. As of January 5, 2010, Prediction still had not effected service of the summons and complaint. At a status conference held on that date, counsel for Prediction told the Court that service had not been effected because Prediction did not know Rajgarhia’s address in India. At the request of counsel for Prediction, the Court directed me to ask Rajgarhia if he would provide his address in India voluntarily.

9. As of February 26, 2010, Prediction still had not effected service of the summons and complaint. At a status conference held on that date, counsel for Prediction again told the Court that service had not been effected because Prediction did not know Rajgarhia’s address in India; and I reiterated that Rajgarhia declined to voluntarily participate in this action. At the conference, the Court ruled that Prediction had one week to move for leave to employ substitute service or the Court would dismiss the action for failure to timely serve the summons and complaint.

10. Counsel for the parties have exchanged the letters required by the Court's Individual Rules and Procedures III(B).

\* \* \*

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct. Executed on April 20, 2010.

  
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LANCE J. GOTKO